

January 23, 2015

Zeny M. Agullana
VP Community Relations Manager
Western Region
Office of Nonprofit Engagement
J.P. Morgan Chase & Co.
1415 L Street, Suite 650
Sacramento, CA 95814

Re: Your Request for Advice
Our File No. A-15-008

Dear Mr. Agullana:

This letter responds to your request for advice regarding the provisions of the Political Reform Act (the “Act”).¹

Please note that we are only providing advice under the conflict of interest provisions of the Act and Section 1090, and not under other general conflict of interest prohibitions such as common law conflict of interest.

QUESTION

Will your acceptance of an appointment to the Committee of Bar Examiners (the “Committee”) within the California State Bar affect you or your current employer, J.P. Morgan Chase & Co. (“JPM”)?

CONCLUSION

Under the Act, you may be required to disqualify yourself from any decisions financially affecting JPM. Moreover, absent an exception, Section 1090 could prohibit a contract between JPM and the State Bar. However, it is unlikely either provision will be triggered in light of your duties with the Committee.

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

FACTS

You are considering a gubernatorial appointment to the Committee. The Committee is responsible for:

- Determining the moral character of more than 8,000 applicants for admission to practice law in California per year;
- The development, administration and grading of the California Bar Examination for approximately 14,000 applicants per year;
- The development, administration and grading of the First-Year Law Students' Examination for more than 1,200 applicants per year; and,
- The accreditation of 17 law schools in California that are not approved by the American Bar Association, of which there are 21 in California, and oversight of an additional 25 registered unaccredited law schools: which includes seven correspondence law schools, five distance-learning law schools, and 13 fixed-facility law schools.

The Committee generally meets six to eight times a year and during at least one of those meetings, a long-range planning session is held. Committee members contribute additional volunteer hours through participation in examination editing and grading calibration meetings, conducting informal conferences with moral character determination applicants, visiting bar examination test centers during administration of the examination, representing the Committee at Admissions Ceremonies for new admittees, and participating in law school visitations. Members of the Committee are designated employees in the conflict of interest code of the State Bar.

The State Bar's Office of Admissions provides staff support to the Committee. There are 60 permanent full-time positions, which are located in two offices – San Francisco and Los Angeles – allocated to the Office of Admissions to carry out the work of the Committee. It has an annual budget of more than \$19 million dollars, which is funded primarily from applicant fees set by the State Bar's Board of Trustees, upon recommendation of the Committee.

All members are appointed for four-year terms. The position you are considering is a non-attorney position. There is no compensation for Committee members beyond reimbursement for "actual and necessary expenses" incurred in the performance of their official duties.

ANALYSIS

The Act, in Section 87100, and Section 1090 both generally prohibit public officials from participating in government decisions in which they have a financial interest. Subject to certain

exceptions, the Act applies to all government decisions and Section 1090 applies to government decisions relating to the making of contracts.

Section 87100

Generally, the Act's conflict-of-interest provisions prohibit any public official from making, participating in making, or using his or her official position to influence a governmental decision in which the official has a financial interest. (Section 87100.) A public official has a "financial interest" in a governmental decision, within the meaning of the Act, if it is reasonably foreseeable that the decision will have a material financial effect on one or more of the public official's economic interests. (Section 87103; Regulation 18700(a).) The Commission has adopted an eight-step standard analysis for deciding whether an individual has a conflict of interest under Section 87100.

Steps 1, 2, and 3: Is the individual a public official that will be making, participating in making, or using his or her official position to attempt to influence a government decision?

A "public official" is "every member, officer, employee or consultant of a state or local government agency . . ." (Section 82048.) A public official makes, participates in making, or uses his or her official position to attempt to influence a government decision when any of the following apply.

- An official "makes" a government decision when he or she, among other things, votes on a matter, enters into a contract on behalf of his or her agency, or obligates or commits his or her agency to any course of action. (Regulation 18702.1(a).)
- An official "participates" in a government decision when, generally, he or she negotiates, without significant substantive review, regarding a government decision, or advises or makes recommendations to the decision maker directly or without significant substantive review. (Regulation 18702.1(a) and (b).)
- An official "uses his or her official position to influence" a government decision when he or she contacts, appears before or otherwise attempts to influence a member, officer, employee or consultant of the official's own agency or, when appearing before another government agency, the official acts or purports to act on behalf of his or her own agency. (Regulation 18702.3(a) and (b).)

Section 87103 and Regulations 18703 through 18703.5 set forth the types of interests held by a public official that, when affected by a government decision, may expose the official to a possible conflict of interest.

- A business entity in which he or she has a direct or indirect investment of \$2,000 or more (Section 87103(a), Regulation 18703.1(a)); or in which he or she is a director, officer,

partner, trustee, employee, or holds any position of management (Section 87103(d) Regulation 18703.1(b));

- Real property in which he or she has a direct or indirect interest of \$2,000 or more (Section 87103(b), Regulation 18703.2);
- A source of income, including promised income, which aggregates to \$500 or more within 12 months prior to the decision (Section 87103(c), Regulation 18703.3);
- A source of gifts to him or her if the gifts aggregate to \$460 or more within 12 months prior to the decision (Section 87103(e), Regulation 18703.4);
- The official's personal finances, including those of his or her immediate family -- this is the "personal financial effects" rule (Section 87103, Regulation 18703.5).

You are employed by JPM and receive income from JPM. Thus, JPM would be a potentially disqualifying interest. Thus, as a member of the Committee of Bar Examiners, you not make, participate in making, or use your official position to influence a governmental decision if it is reasonably foreseeable that the decision will have a material financial effect on JPM.

Looking at the duties of the state bar position, however, it seems unlikely that state bar decisions would affect JPM. But if it will, your obligation will be to abstain from making, participating in, or influencing the decision. Your disqualification from a matter affecting JPM, however, would not prevent JPM from contracting with the State Bar.

Section 1090

Section 1090 generally prohibits public officers, while acting in their official capacities, from making contracts in which they are financially interested. Section 1090 is concerned with financial interests, other than remote or minimal interests, that prevent public officials from exercising absolute loyalty and undivided allegiance in furthering the best interests of their agencies. (*Stigall v. Taft* (1962) 58 Cal.2d 565, 569.) Section 1090 is intended "not only to strike at actual impropriety, but also to strike at the appearance of impropriety." (*City of Imperial Beach v. Bailey* (1980) 103 Cal.App.3d 191, 197.)

Again, based on the duties you will have at the state bar, it appears unlikely that Section 1090 will be triggered and applied to JPM. Even if a potential 1090 scenario regarding JPM did materialize, we note that the courts have rejected the notion that the "mere prospect" that the official's judgment "will be colored because he or she receives income from the party with whom the official's agency is contracting" is sufficient to establish a prohibited financial interest under section 1090. It is important to first determine "whether the official receives any direct or indirect benefit from the agreement." (*Eden Township Healthcare Dist. v. Sutter Health* (2011)

202 Cal.App.4th 208.) Assuming that any contract decision with JPM would not affect your salary or benefits from JPM, you would not have a 1090 conflict of interest.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

John W. Wallace
Assistant General Counsel,
Legal Division

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